

FIRST REGULAR SESSION

SENATE BILL NO. 568

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Read 1st time February 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2262S.011

AN ACT

To amend chapters 33 and 537, RSMo, by adding thereto four new sections relating to recovery and oversight of waste of public funds.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapters 33 and 537, RSMo, are amended by adding thereto
2 four new sections, to be known as sections 33.850, 537.800, 537.805, and 537.810
3 to read as follows:

**33.850. 1. There is hereby established the "Recovery
2 Accountability and Transparency Board", within the office of
3 administration, to coordinate and conduct oversight of covered funds
4 to prevent fraud, waste, and abuse.**

5 2. The board shall consist of the following five members:

**6 (1) The commissioner of the office of administration, or his or
7 her designee;**

**8 (2) Two members of the senate appointed by the president pro
9 tem of the senate, one of which shall be from the majority party and
10 one of which shall be from the minority party; and**

**11 (3) Two members of the house of representatives appointed by
12 the speaker of the house of representatives, one of which shall be from
13 the majority party and one of which shall be from the minority party.**

**14 3. The appointment of the senate and house members shall
15 continue during the member's term of office as a member of the general
16 assembly or until a successor has been appointed to fill the member's
17 place when his or her term of office as a member of the general
18 assembly has expired.**

**19 4. The board shall coordinate and conduct oversight of covered
20 funds in order to prevent fraud, waste, and abuse, including:**

21 (1) Reviewing whether the reporting of contracts and grants
22 using covered funds meets applicable standards and specifies the
23 purpose of the contract or grant and measures of performance;

24 (2) Reviewing whether competition requirements applicable to
25 contracts and grants using covered funds have been satisfied; and

26 (3) Auditing or reviewing covered funds to determine whether
27 wasteful spending, poor contract or grant management, or other abuses
28 are occurring and referring matters it considers appropriate for
29 investigation to the attorney general or the agency that disbursed the
30 covered funds.

31 5. The board shall submit annual reports to the governor and
32 general assembly, including the senate appropriations committee and
33 house budget committee, that summarize the findings of the board with
34 regard to its duties in subsection 4 of this section. All reports
35 submitted under this subsection shall be made publicly available and
36 posted on the governor's web site, the general assembly web site, and
37 each state agency web site. Any portion of a report submitted under
38 this subsection may be redacted when made publicly available, if that
39 portion would disclose information that is not subject to disclosure
40 under chapter 610, RSMo, or any other provision of state law.

41 6. (1) The board shall make recommendations to agencies on
42 measures to prevent fraud, waste, and abuse relating to covered funds.

43 (2) Not later than thirty days after receipt of a recommendation
44 under subdivision (1) of this subsection, an agency shall submit a
45 report to the governor and general assembly, including the senate
46 appropriations committee and house budget committee, and the board
47 that states:

48 (a) Whether the agency agrees or disagrees with the
49 recommendations; and

50 (b) Any actions the agency will take to implement the
51 recommendations.

52 7. (1) The board may:

53 (a) Conduct its own independent audits and reviews relating to
54 covered funds; and

55 (b) Collaborate on audits and reviews relating to covered funds
56 with the state auditor.

57 (2) In conducting audits and reviews under this subsection, the

58 board may issue subpoenas to compel the testimony of persons who are
59 not federal officers or employees and may enforce such subpoenas in
60 the same manner as provided by the supreme court rules.

61 8. (1) Not later than thirty days after the date on which all
62 initial members of the board have been appointed, the board shall hold
63 its first meeting. Thereafter, the board shall meet at the call of the
64 chairperson of the board.

65 (2) A majority of the members of the board shall constitute a
66 quorum, but a lesser number of members may hold hearings.

67 9. The board may hold such hearings, sit and act at such times
68 and places, take such testimony, and receive such evidence as the
69 board considers advisable to carry out the provisions of this
70 section. Each agency of this state shall cooperate with any request of
71 the board to provide such information as the board deems necessary to
72 carry out the provisions of this section. Upon request of the board, the
73 head of each agency shall furnish such information to the board. The
74 head of each agency shall make all officers and employees of that
75 agency available to provide testimony to the board and board
76 personnel. The board may issue subpoenas to compel the testimony of
77 persons who are not federal officers or employees at such public
78 hearings. Any such subpoenas may be enforced in the same manner as
79 provided by the supreme court rules.

80 10. The board may enter into contracts to enable the board to
81 discharge its duties under the provisions of this section, including
82 contracts and other arrangements for audits, studies, analyses, and
83 other services with public agencies and with private persons.

84 11. As used in this section, the term "covered fund" shall mean
85 any moneys received by the state or any political subdivision under the
86 American Recovery and Reinvestment Act of 2009, as enacted by the
87 111th United States Congress.

537.800. As used in sections 537.800 to 537.810, the following
2 terms mean:

3 (1) "Government", state of Missouri, political subdivision, public
4 school district, or public charter school of the state;

5 (2) "Person", any individual, entity, corporation, partnership, or
6 association, officer, or employee of any state or private entity.

537.805. 1. Any person shall be liable to the government affected

2 for a civil penalty of not less than ten thousand dollars and not more
3 than one hundred thousand dollars, plus three times the amount of
4 damages which the government sustains because of the act of that
5 person, if they:

6 (1) Knowingly presents, or causes to be presented, a false or
7 fraudulent claim for payment or approval to an officer or employee of
8 the government;

9 (2) Knowingly makes, uses, or causes to be made or used, a false
10 record or statement to get a false or fraudulent claim paid or approved
11 by the government;

12 (3) Conspires to defraud the government by getting a false or
13 fraudulent claim allowed or paid;

14 (4) Has possession, custody, or control of property or money
15 used, or to be used, by the government and, intending to defraud the
16 government or willfully to conceal the property, delivers, or causes to
17 be delivered, less property than the amount for which the person
18 receives a certificate or receipt;

19 (5) Authorized to make or deliver a document certifying receipt
20 of property used, or to be used, by the government and, intending to
21 defraud the government, makes or delivers the receipt without
22 completely knowing that the information on the receipt is true;

23 (6) Knowingly buys, or receives as a pledge of an obligation or
24 debt, public property from an officer, employee, or agent of the
25 government who lawfully may not sell or pledge to property;

26 (7) Knowingly makes, uses, or causes to be made or used, a false
27 record or statement to conceal, avoid, or decrease an obligation to pay
28 or transmit money or property to the government; or

29 (8) Violates sections 105.452 or 105.454, RSMo, or sections
30 576.010, 576.020, 576.030, 576.040, 576.050, or 576.080, RSMo.

31 2. Notwithstanding the provision of subsection 1 of this section,
32 the court may assess not less than two times the amount of damages
33 which the government sustains because of the act of the person if the
34 court finds that:

35 (1) The person committing the violation of subsection 1 of this
36 section furnished officials of the governmental entity responsible for
37 investigating false claims violations with all information known to such
38 person about the violation within thirty days after the date on which

39 the defendant first obtained the information;

40 (2) Such person fully cooperated with any government
41 investigation of such violation; and

42 (3) At the time such person furnished the government with the
43 information about the violation, no criminal prosecution, civil action,
44 or administrative action had commenced under this act with respect to
45 such violation, and the person did not have actual knowledge of the
46 existence of an investigation into such violation.

47 3. A person violating subsections 1 or 2 of this section shall also
48 be liable to the government for the costs of a civil action brought to
49 recover any such penalty or damages.

50 4. For purposes of this section, the terms "knowing" and
51 "knowingly" mean that a person, with respect to information:

52 (1) Has actual knowledge of the information;

53 (2) Acts in deliberate ignorance of the truth or falsity of the
54 information; or

55 (3) Acts in reckless disregard of the truth or falsity of the
56 information, and no proof of specific intent to defraud is required.

57 5. For purposes of this section, "claim" includes any request or
58 demand, whether under a contract or otherwise, for money or property
59 which is made to a contractor, grantee, or other recipient if the
60 government provides any portion of the money or property which is
61 requested or demanded, or if the government will reimburse such
62 contractor, grantee, or other recipient for any portion of the money or
63 property which is requested or demanded.

64 6. Any information furnished under subdivisions (1) to (3) of
65 subsection 2 of this section shall be exempt from disclosure under this
66 section.

67 7. This section does not apply to claims, records, or statements
68 made under any provisions applicable to state or local taxation.

537.810. 1. The attorney general diligently shall investigate a
2 violation under section 537.805. If the attorney general finds that a
3 person has violated or is violating section 537.805, the attorney general
4 may bring a civil action against the person.

5 2. (1) A person may bring a civil action for a violation of section
6 537.805 for the person and for the government. The action shall be
7 brought in the name of the government. The action may be dismissed

8 only if the court and the attorney general give written consent to the
9 dismissal and their reasons for consenting.

10 (2) A copy of the petition and written disclosure of substantially
11 all material evidence and information the person possesses shall be
12 served on the attorney general pursuant to the supreme court
13 rules. The petition shall be filed in camera, shall remain under seal for
14 at least sixty days, and shall not be served on the defendant until the
15 court so orders. The government may elect to intervene and proceed
16 with the action within sixty days after it receives both the petition and
17 the material evidence and information.

18 (3) The government may, for good cause shown, move the court
19 for extensions of the time during which the petition remains under seal
20 under subdivision (2) of this section. Any such motions may be
21 supported by affidavits or other submissions in camera. The defendant
22 shall not be required to respond to any petition filed under this section
23 until thirty days after the petition is unsealed and served upon the
24 defendant pursuant to the supreme court rules.

25 (4) Before the expiration of the sixty-day period or any
26 extensions obtained under subdivision (3) of this section, the
27 government shall:

28 (a) Proceed with the action, in which case the action shall be
29 conducted by the government; or

30 (b) Notify the court that it declines to take over the action, in
31 which case the person bringing the action shall have the right to
32 conduct the action.

33 (5) When a person brings an action under this subsection, no
34 person other than the government may intervene or bring a related
35 action based on the facts underlying the pending action.

36 3. (1) If the government proceeds with the action, it shall have
37 the primary responsibility for prosecuting the action, and shall not be
38 bound by an act of the person bringing the action. Such person shall
39 have the right to continue as a party to the action, subject to the
40 limitations set forth in subdivision (2) of this subsection.

41 (2) (a) The government may dismiss the action notwithstanding
42 the objections of the person initiating the action if the person has been
43 notified by the government of the filing of the motion and the court has
44 provided the person with an opportunity for a hearing on the motion.

45 **(b) The government may settle the action with the defendant**
46 **notwithstanding the objections of the person initiating the action if the**
47 **court determines, after a hearing, that the proposed settlement is fair,**
48 **adequate, and reasonable under all the circumstances. Upon a showing**
49 **of good cause, such hearing may be held in camera.**

50 **(c) Upon a showing by the government that unrestricted**
51 **participation during the course of the litigation by the person initiating**
52 **the action would interfere with or unduly delay the government's**
53 **prosecution of the case, or would be repetitious, irrelevant, or for**
54 **purposes of harassment, the court may, in its discretion, impose**
55 **limitations on the person's participation, such as:**

- 56 **a. Limiting the number of witnesses the person may call;**
- 57 **b. Limiting the length of the testimony of such witnesses;**
- 58 **c. Limiting the person's cross-examination of witnesses; or**
- 59 **d. Limiting the participation by the person in the litigation.**

60 **(d) Upon a showing by the defendant that unrestricted**
61 **participation during the course of the litigation by the person initiating**
62 **the action would be for purposes of harassment or would cause the**
63 **defendant undue burden or unnecessary expense, the court may limit**
64 **the participation by the person in the litigation.**

65 **(3) If the government elects not to proceed with the action, the**
66 **person who initiated the action shall have the right to conduct the**
67 **action. If the government so requests, it shall be served with copies of**
68 **all pleadings filed in the action and shall be supplied with copies of all**
69 **deposition transcripts, at the government's expense. When a person**
70 **proceeds with the action, the court, without limiting the status and**
71 **rights of the person initiating the action, may nevertheless permit the**
72 **government to intervene at a later date upon a showing of good cause.**

73 **(4) Whether or not the government proceeds with the action,**
74 **upon a showing by the government that certain actions of discovery by**
75 **the person initiating the action would interfere with the government's**
76 **investigation or prosecution of a criminal or civil matter arising out of**
77 **the same facts, the court may stay such discovery for a period of not**
78 **more than sixty days. Such a showing shall be conducted in**
79 **camera. The court may extend the sixty-day period upon a further**
80 **showing in camera that the government has pursued the criminal or**
81 **civil investigation or proceedings with reasonable diligence and any**

82 proposed discovery in the civil action will interfere with the ongoing
83 criminal or civil investigation or proceedings.

84 (5) Notwithstanding subsection 2 of this section, the government
85 may elect to pursue its claim through any alternate remedy available
86 to the government, including any administrative proceeding to
87 determine a civil money penalty. If any such alternate remedy is
88 pursued in another proceeding, the person initiating the action shall
89 have the same rights in such proceeding as such person would have had
90 if the action had continued under this section. Any finding of fact or
91 conclusion of law made in such other proceeding that has become final
92 shall be conclusive on all parties to an action under this section. For
93 purposes of the preceding sentence, a finding or conclusion is final if
94 it has been finally determined on appeal to the appropriate court of the
95 state, if all time for filing such an appeal with respect to the finding or
96 conclusion has expired, or if the finding or conclusion is not subject to
97 judicial review.

98 4. (1) If the government proceeds with an action brought by a
99 person under subsection 2 of this section, such person shall, subject to
100 the second sentence of this subdivision, receive at least fifteen percent
101 but not more than twenty-five percent of the proceeds of the action or
102 settlement of the claim, depending upon the extent to which the person
103 substantially contributed to the prosecution of the action. Where the
104 action is one which the court finds to be based primarily on disclosures
105 of specific information, other than information provided by the person
106 bringing the action, relating to allegations or transactions in a
107 criminal, civil, or administrative hearing, in a federal or state
108 governmental report, hearing, audit, or investigation, or from the news
109 media, the court may award such sums as it considers appropriate, but
110 in no case more than ten percent of the proceeds, taking into account
111 the significance of the information and the role of the person bringing
112 the action in advancing the case to litigation. Any payment to a person
113 under the first or second sentence of this subdivision shall be made
114 from the proceeds. Any such person shall also receive an amount for
115 reasonable expenses which the court finds to have been necessarily
116 incurred, plus reasonable attorneys' fees and costs. All such expenses,
117 fees, and costs shall be awarded against the defendant.

118 (2) If the government does not proceed with an action under this

119 section, the person bringing the action or settling the claim shall
120 receive an amount which the court decides is reasonable for collecting
121 the civil penalty and damages. The amount shall be not less than
122 twenty-five percent and not more than thirty percent of the proceeds
123 of the action or settlement and shall be paid out of such proceeds. Such
124 person shall also receive an amount for reasonable expenses which the
125 court finds to have been necessarily incurred, plus reasonable
126 attorneys' fees and costs. All such expenses, fees, and costs shall be
127 awarded against the defendant.

128 (3) Whether or not the government proceeds with the action, if
129 the court finds that the action was brought by a person who planned
130 and initiated the violation of state law upon which the action was
131 brought, then the court may, to the extent the court considers
132 appropriate, reduce the share of the proceeds of the action which the
133 person would otherwise receive under subdivision (1) or (2) of this
134 subsection, taking into account the role of that person in advancing the
135 case to litigation and any relevant circumstances pertaining to the
136 violation. If the person bringing the action is convicted of criminal
137 conduct arising from his or her role in the violation, that person shall
138 be dismissed from the civil action and shall not receive any share of the
139 proceeds of the action. Such dismissal shall not prejudice the right of
140 the government to continue the action, represented by the attorney
141 general.

142 (4) If the government does not proceed with the action and the
143 person bringing the action conducts the action, the court may award to
144 the defendant its reasonable attorneys' fees and expenses if the
145 defendant prevails in the action and the court finds that the claim of
146 the person bringing the action was clearly frivolous, clearly vexatious,
147 or brought primarily for purposes of harassment.

148 5. (1) No court shall have jurisdiction over an action brought by
149 a former or present member of the national guard under subsection 2
150 of this section against a member of the national guard arising out of
151 such person's service in the national guard.

152 (2) (a) No court shall have jurisdiction over an action brought
153 under subsection 2 of this section against the general assembly, a
154 member of the judiciary, or a senior executive branch official if the
155 action is based on evidence or information known to the government

156 when the action was brought.

157 (b) For purposes of this subdivision, "senior executive branch
158 official" means the governor; lieutenant governor; director, division
159 director, or counsel of any state agency; or members of any state board,
160 commission, council, or of the general assembly.

161 (3) In no event may a person bring an action under subsection
162 2 of this section which is based upon allegations or transactions which
163 are the subject of a civil suit or an administrative civil money penalty
164 proceeding in which the government is already a party.

165 (4) (a) No court shall have jurisdiction over an action under this
166 section based upon the public disclosure of allegations or transactions
167 in a criminal, civil, or administrative hearing, in a congressional,
168 administrative, or federal or state governmental report, hearing, audit,
169 or investigation, or from the news media, unless the action is brought
170 by the attorney general or the person bringing the action is an original
171 source of the information.

172 (b) For purposes of this subdivision, "original source" means an
173 individual who has direct and independent knowledge of the
174 information on which the allegations are based and has voluntarily
175 provided the information to the government before filing an action
176 under this section which is based on the information.

177 6. The government is not liable for expenses which a person
178 incurs in bringing an action under this section.

179 7. In civil actions brought under this section by the state the
180 provisions of this section shall apply.

181 8. Any employee who is discharged, demoted, suspended,
182 threatened, harassed, or in any other manner discriminated against in
183 the terms and conditions of employment by his or her employer because
184 of lawful acts done by the employee on behalf of the employee or others
185 in furtherance of an action under this section, including investigation
186 for, initiation of, testimony for, or assistance in an action filed or to be
187 filed under this section, shall be entitled to all relief necessary to make
188 the employee whole. Such relief shall include reinstatement with the
189 same seniority status such employee would have had but for the
190 discrimination, two times the amount of back pay, interest on the back
191 pay, and compensation for any special damages sustained as a result of
192 the discrimination, including litigation costs and reasonable attorneys'

193 **fees. An employee may bring an action in the appropriate circuit court**
194 **for the relief provided in this subsection.**

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